

McPherson; and therefore the objection against it has not been removed.

Another class of claims are those made by the holders of some accepted bills of exchange. Where a bill has been accepted, the acceptor is considered as the principal debtor, and primarily liable for the whole amount to all others, the drawer, endorsers, and holder. The acceptance is *prima facie* evidence against the acceptor of his having in his hands effects of the drawer; and therefore, if the fact be not so, it lies upon the acceptor to establish the fact to enable him to recover from the drawer. *Selwyn N. P.* 351. Hence all these claims founded on bills of exchange drawn by the late Thomas Tongue, which had been accepted, must be regarded as claims for which he was not the principal debtor; unless it should be shewn that the acceptor paid it without having in his hands effects of the drawer. And as the drawer and endorser stand in the relation to each other of a series of sureties, it must be shewn, that each one who stood before, and was, therefore, principal \*debtor to him against whose estate the claim is made, is insolvent: or, according to the rule of this Court, **358** the claim will be excluded from any participation in the distribution of the estate upon which it is made. *Watkins v. Worthington*, 2 *Bland*, 509.

The auditor says, that the original acceptances ought to be produced. By this I understand it to be objected, that the original bills of exchange themselves have not been produced. In an action at law upon a bill of exchange, on the general issue being pleaded, it is necessary to produce the original bill itself, or to prove that it has been lost, before any evidence can be offered of its contents. *Selwyn N. P.* 408. And even if, in such action, there is a judgment by default; although it is not necessary, on executing the writ of inquiry, to prove the contract; yet the original bill itself must be produced. *Tidd's Prac.* 523. But, in the distribution of the real assets, this Court is governed by the rules prescribed for the authentication of claims in the analogous distribution of the personal assets. As to which it is declared, by the Act in relation to the administration of the personal estates of deceased persons, that in case of a specialty, bond, note, or protested bill of exchange, the voucher shall be the instrument of writing itself, or a proved copy, in case it be lost, with a certificate of the oath, &c. 1798, ch. 101, sub-ch. 9, s. 4.

These directions apply to claims No. 67, 108, 109, 110, 111, 112 and 113, which must be allowed, because the acceptors are shewn to be insolvent; to claims No. 69 and 70, which must be rejected, because the original bills have not been produced or shewn to be lost; and to claim No. 91, which must be rejected, because it is made by an acceptor who has not shewn that he had in his hands at the time no effects of the drawer.